REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed February 17, 2005. In the Office Action, the Examiner notes that claims 2-5 and 7-9 are pending and rejected. By this response, **???**

In view of **both the amendments presented above and** the following discussion, the Applicants submit that none of the claims now pending in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103.

It is to be understood that the Applicants, **by amending the claims**, do not acquiesce to the Examiner's characterizations of the art of record or to the Applicants' subject matter recited in the pending claims. Further, the Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant **responsive amendments.**

REJECTIONS

Rejections of claims under 35 U.S.C. § 102

The Examiner has rejected claims 2, 3-5 and 7 under 35 U.S.C. §102(e) as being anticipated by Kronz U.S. Patent No. 6,577,610 (hereinafter "Kronz"). The Applicants respectfully traverse the Examiner's rejection.

The Applicants' independent claim 2 recites (independent claims 3, 5 and 7 recite similar limitations):

> "A method for use in a transmitter, the method comprising the steps of:
>
> using a downlink channel to convey information to a group of devices; and
>
> load balancing the downlink channel; wherein the downlink channel comprises a sequence of dwells, each dwell having a time period, and wherein the method further comprises the step of detecting that at least one dwell of the sequence conveys more downlink information than the other dwells of the sequence as a prerequisite to performing the load balancing step."

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim" (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). The Kronz reference fails to disclose each and every element of the claimed invention, as arranged in the claim.

As such, the Applicants submit that independent claims 2, 3, 5 and 7 are not anticipated and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder. Furthermore, claim 4 depends directly from independent claim 3 and recites additional limitations thereof. As such and at least for the same reasons as discussed above, the Applicants submit that dependent claim 3 is also not anticipated and fully satisfies the requirements of 35 U.S.C. §102 and is patentable thereunder. Therefore, the Applicants respectfully request that the Examiner's rejection be withdrawn.

Rejection of Claims under 35 U.S.C. § 103

The Examiner has rejected claims 8 and 9 under 35 U.S.C. §103 as being unpatentable over Kronz in view of "a cellular wireless local area network with QoS Guarantees for Heterogeneous Traffic," Choi et al. (hereinafter "Choi"), 1997. The Applicants respectfully traverse the Examiner's rejection.

The Applicants' independent claim 8 recites (independent claim 9 recites similar limitations):

> "Apparatus for use in a wireless system, the apparatus comprising:
> a memory for storing data for transmission from a source to a group of N wireless endpoints via a downlink channel;
> a scheduler for retrieving the stored data and for measuring the amount of stored data transmitted in each of M timeslots in the downlink channel to the N wireless endpoints, and for comparing

> the measured data for at-least-one of the M timeslots to others of the M timeslots for detecting an imbalance in the transmission and for shifting some of the data from at least one time slot to another time slot for reducing the detected imbalance."

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The Kronz and Choi references alone and in combination fail to teach or suggest the Applicants' invention as a whole.

As such, the Applicants submit that independent claims 8 and 9 are not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, the Applicants respectfully request that the Examiner's rejection be withdrawn.

SECONDARY REFERENCES

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the Office Action. Therefore, the Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this office action.

CONCLUSION

Thus, the Applicants submit that none of the claims presently in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

3/25/05

E/Wall

Eamon J. Wall, Agent
Reg. No. 39,414
(732) 530-9404

Moser, Patterson & Sheridan, LLP
595 Shrewsbury Avenue
Suite 100
Shrewsbury, New Jersey 07702